IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

WP(C).No. 855 of 2007(B)

PETITIONER:

P.C. MOIDEENKOYA, S/O.KUNHAMMED,
ARAMAM, P.O.MUTTANCHERY,
NARIKKUNI, KOZHIKODE DISTRICT.

BY ADV. SRI.V.RAJENDRAN

RESPONDENTS:

1. REGIONAL TRANSPORT AUTHORITY,
KOZHIKODE, REPRESENTED BY ITS SECRETARY.

2. THE SECRETARY, REGIONAL TRANSPORT
AUTHORITY, KOZHIKODE.

3. MOHAMMED ABDUL LATHEEF,
POYIL HOUSE, PADANILAM, KUNNAMANGALAM,
KOZHIKODE DISTRICT.

R1 AND R2 BY GOVT.PLEADE SRI K.R.DEEPA
R3 BY ADV. SRI.K.V.GOPINATHAN NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE TIME SCHEDULE OF THE VEHICLE KL-11/Q 257 ISSUED BY THE IST RESPONDENT.

EXT.P2 TRUE COPY OF THE ORDER DTD. 18/9/2006 OF THE 2ND RESPONDENT.

EXT.P3 TRUE COPY OF THE ORDER DTD. 23/11/2006 OF THE 2ND RESPONDENT.

EXT.P4 TRUE COPY OF THE LETTER DTD. 6/1/2007 OF THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P5 TRUE COPY OF THE ORDER DTD. 28/12/2006 OF THE STAT IN M.P.NO.2829/2006 IN MVARP.NO.617/2006.

EXT.P6 TRUE COPY OF MVARP.NO.617/06 FILED BY THE 3RD RESPONDENT BEFORE THE STAT.

P.R.RAMAN,J.

W.P.(C).NO.855 OF 2007

Dated this the 15th day of January, 2007

JUDGMENT

This writ petition is filed challenging an interim order passed by the State Transport Appellate Tribunal pending consideration of a revision filed before it by the 3rd respondent herein. The prime contention raised in this writ petition is that though the petitioner was a party made in the revision, even without serving a notice thereon, an interim order was passed. Hence, according to him, this order is illegal. It is also his contention that in exercise of the revisional powers even in the matter of interim orders, revisional authority cannot pass an ex parte order. Petitioner placed reliance on the decision of this Court in **Johnson v. R.T.A., Vadakara (2006(2) KLT**

1016). This Court noticed that the 3rd proviso to Section 90 specifically provides that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard whereas Section 89 provides for an appeal does not contain similar provision. Rule 10 of the State Transport Appellate Tribunal Rules provides that no interim order shall be passed by the Tribunal, unless a copy thereof is served on the Standing Counsel. By the 2nd proviso to the said rule an ex parte interim order, if absolutely necessary, could be passed limiting to a period of 14 days. In **Johnson's case (2006(2) KLT 1016)** this Court read down Rule 10 as being applicable only to the cases

requiring the standing counsel to be heard and at any rate not in the case of revision. When the statute itself while exercising the revisional powers mandates a prior notice, the rule cannot give more power, at any rate contrary to the 3rd proviso to Section 90. In view of the decision reported in **Johnson's case (2006 (2) KLT 1016)** it has to be held that the impugned order without serving notice on the petitioner, though a party made, is without jurisdiction.

2. In such circumstances, the impugned order is set aside. The State Transport Appellate Tribunal shall pass fresh orders, after hearing the petitioner as well as the 3rd respondent herein. In order to avoid further delay in the matter, the parties shall

take notice that they shall appear before the STAT on 30th January, 2007.

Writ Petition is allowed.

Issue emergent copy.

P.R.RAMAN,
Judge.

kcv.